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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/300,959

04/27/99

ZANETTI

M

F-ZA-3519

HM22/0229

EXAMINER

STROUP, C

ART UNIT

PAPER NUMBER

1633

5

DATE MAILED:

02/29/00

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/300,959

Applicant(s)

Zanetti

Examiner

Stroup, Carrie

Group Art Unit

1633



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-33 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-33 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9, and 12-17, drawn to a method of stimulating an immune response, classified in class 435, subclass 184.1.
 - II. Claims 10, 11, 18- 21, 27, and 28, drawn to a nucleic acid molecule encoding an epitope fused with a cytokine, classified in class 435, subclass 192.1.
 - III. Claims 22-26, drawn to a nucleic acid molecule encoding an immunoglobulin molecule, classified in class 435, subclass 130.1.
 - IV. Claims 29-32, drawn to a method of treating utilizing a nucleic acid molecule targeted to a hematopoietic cell, classified in class 514, subclass 44.
 - V. Claim 33, drawn to a method of treating a condition utilizing a nucleic acid molecule encoding a hormone, classified in class 435, subclass 198.1.

2. The inventions are distinct, each from the other because of the following reasons:

The inventions of groups II-IV are drawn to materially different structures. For example, the invention of group I is drawn to a nucleic acid molecule encoding a hematopoietic cell expression element operationally linked to a nucleic acid sequence encoding heterologous polypeptide comprising a cytokine; the invention of group III is drawn to a nucleic acid molecule encoding an immunoglobulin molecule with one or more epitopes inserted within the

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complementarity-determining region of said immunoglobulin; and the invention of group IV is drawn to a nucleic acid molecule encoding a hematopoietic cell expression element targeted to a hematopoietic cell.

3. The inventions of groups I and V are drawn to materially different methods. For example, the invention of group I is drawn to a method of stimulating an immune response by administering to lymphoid tissues a nucleic acid molecule comprising an expression element operationally linked to a nucleic acid sequence encoding one or more heterologous epitopes which can elicit an antibody response, CD4 and/or CD8 T cell response; while the invention of group V is to a method of treating a condition via administering a nucleic acid molecule comprising a hematopoietic cell expression element operationally linked to a nucleic acid sequence encoding a heterologous polypeptide encoding a hormone or clotting factor.

3. The inventions are distinct, each from the other because of the following reasons: Inventions I and II-IV are unrelated, and inventions V and II-IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions the nucleic acids of groups II-IV cannot be used with the methods of group I or V.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their divergent classifications, recognized divergent subject matter and further because the searches required for the different inventions are not coextensive, restriction for examination purposes as indicated is proper.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

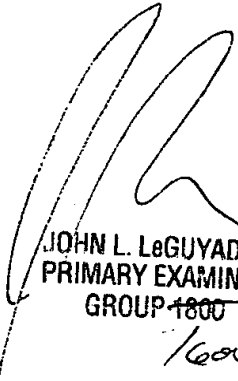
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carrie Stroup whose telephone number is (703) 306-5439. The examiner can normally be reached on Monday through Friday from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader, can be reached at (703) 308-0294. The fax phone number for this Group is (703) 308-8724.

Carrie Stroup


JOHN L. LeGUYADER
PRIMARY EXAMINER
GROUP 1800
1/600